IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1202 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAUZER R NOWAROJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1202 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1-2

MR BD DESAI, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/11/2003

ORAL JUDGEMENT

1. The applicants have approached this Court by filing this application u/S. 482 of the Code of Criminal

Procedure seeking exercise of its inherent powers by this Court for quashing proceedings of Criminal case No. 1528 of 2001 pending in the Court of the learned Judicial Magistrate First Class at Bardoli filed under the provisions of the Prevention of Food Adulteration Act, 1954 (for short 'the Act').

1.1. On perusal of the complaint which has been produced by the applicants, it appears that respondent no. 2 - Food Inspector then attached to the office of the Assistant Commissioner and Local Health Authority, Food and Drugs Department, Surat circle, was on his usual round on 7th October, 1998, at the premises of the applicants, who, it appears deal in the business of food items in the name of M/s. M.R. & Sons and summoned the person looking after the business, namely Harishkumar Maganlal Nayak. Since respondent no. 2 intended to have sample of Wrigley chewing-gum, he asked said Harishbhai to sell certain packs of the said chewing-gum. This happened in the presence of one Chetankumar Sudhirbhai Nayak, who was summoned to be a witness of the proceedings. In response to the demand made by respondent no. 2, said Harishbhai sold three packs of Wrigley chewing-gum weighing 486 grams. Respondent no. 2 paid the purchase price of Rs.471/- and also prepared a cash memo and handed it over to said Harishbhai. He thereafter divided the sample into three equal parts and after complying with the requisite formalities prescribed under the provisions of rules 14 and 15 of the Prevention of Food Adulteration Rules, 1955 (for short 'the PFA Rules'), despatched the sample to the Public Analyst, Bhuj for analysis. On receipt of the report from the Public Analyst, it was found that there was noncompliance of section 2 (ix) (k) read with rule 32 (e) of the PFA Rules. Respondent no. 2, therefore, obtained necessary consent for prosecuting the applicants and others for offences u/Ss. 7 read with 16 of the Act. Upon consent being accorded, respondent no. 2 filed complaint before the concerned Court i.e. in the Court of the learned Judicial Magistrate First Class, Bardoli, which has been numbered as Criminal Case NO. 1528 of 2001 and now the same is sought to be quashed by the applicants.

2. Mr. P.M. Thakkar, learned senior advocate appearing for the applicants has submitted that in the complaint it is alleged that there is violation of provisions of rule 32 (e) of the PFA Rules, which renders the sample misbranded in accordance with the provisions of clause (k) of sub-section (ix) of section 2 of the Act. Such misbranding is made punishable under the Act and, therefore, the present complaint has been filed.

Perusal of clause (e) of rule 32 which is contained in Part-VII of the PFA Rules deals with packing and labelling of goods. Clause (e) reads as under :-

> "(e) A distinctive batch number or lot number or code number, either in numericals or alphabets or in combination, the numericals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch No" or Batch or "Lot No" or "Lot" or any distinguishing prefix :
>
> Provided that in case of canned food, the batch number may be given at the bottom, or on the lid of the container, but the words "Batch No." given at the bottom or on the lid, shall appear on the body of the container."

It is the say of the Food Inspector that the distinctive batch number has not been given on this food item. The report of the Public Analyst is also on the same line. Thus, noncompliance of the said provision is obvious. However, Mr. Thakkar draws my attention to a decision of the Apex Court rendered in the case of Dwarka Nath v/s. Municipal Corporation of Delhi reported in AIR 1971 SC page 1844. The Apex Court in that case was required to deal with the provisions of rule 32(e) of the PFA Rules and while dealing with it, it has observed as under :-

> "21. There is no definition of the expression "batch number" or "Code number" either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of good or the period within which the article of food has to be utilised, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances we are of the opinion that rule 32 (e) is beyond the rule making power even under S. 23(1) (d) of the Act. The appellants could not be convicted for any violation of cl. (e) of R. 32 as the said provision, as pointed out above, is invalid."

Mr. Thakkar has, therefore, submitted that when the Apex Court has declared that the said rule to be invalid, no offence, in the eye of law, has been committed by the applicants by not complying with the provisions of section 32 (e) of the PFA Rules. It is very clear from the record that so far the allegation contained in the complaint is concerned, it only speaks of noncompliance of the requirement under rule 32 (e) of the PFA Rules and the said noncompliance has rendered the sample misbranded. However, when the Apex Court in clear terms has said that clause (e) of rule 32 is invalid, there is no scope of present proceedings resulting into the conviction of the applicants. It may also be stated here that following the decision of the Apex Court, this Court has also in the case of State of Gujarat v/s. Mehta Dinkar Rai Popatlal and the State of Gujarat v/s. Vijaykumar Bhogilal Parekh rendered on 07/03/2000 and 28/07/1998 in Criminal Revision Aplication No. 341 of 1998 and Criminal Appeal No. 474 of 1998 respectively confirmed the order of discharge passed by the trial Court.

3. In light of the aforesaid decisions of the Apex Court and this Court, it is very clear that even if the trial is allowed to proceed against the applicants, it will be an exercise in futility as no conviction is likely to be recorded. The applicants cannot be subjected to such unnecessary harassment, which otherwise amounts to abuse of process of law. This application is, therefore, required to be granted. The proceedings of Criminal Case No. 1528 of 2001 pending on the file of learned Judicial Magistrate First Class at Bardoli are hereby quashed. Rule made absolute.

[AKSHAY H. MEHTA, J.]

* Pansala.